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**September 4, 2015**

Steven B. Andrade  
AO Reed and Co  
4777 Ruffner Street  
San Diego, CA 92111

**VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

**Re: Clean Water Act Notice of Intent to Sue/60-Day Notice Letter  
AO Reed & Co. Violations of General Industrial Permit**

Dear Mr. Andrade:

Please accept this letter on behalf of the Coastal Environmental Rights Foundation (CERF) regarding AO Reed & Co. "AO Reed Owners and/or Operators") violations of the State Water Resources Control Board Water Quality Order Nos. 97-03-DWQ and 2014-0057-DWQ, Natural Pollutant Discharge Elimination System (NPDES), General Permit No. CAS000001, and Waste Discharge Requirements for Discharges of Storm Water Associated With Industrial Activities Excluding Construction Activities (General Industrial Permit).<sup>1</sup> This letter constitutes CERF's notice of intent to sue for violations of the Clean Water Act and General Industrial Permit for AO Reed & Co., located at 4777 Ruffner Street, San Diego, CA ("Facility" or "AO Reed"), as set forth in more detail below.

Section 505(b) of the Clean Water Act requires that sixty (60) days prior to the initiation of a citizen's civil lawsuit in Federal District Court under Section 505(a) of the Act, a citizen must give notice of the violations and the intent to sue to the violator, the Administrator of the U.S. Environmental Protection Agency, the Regional Administrator of the U.S. Environmental Protection Agency for the region in which the violations have occurred, the U.S. Attorney General, and the Chief Administrative Officer for the State in which the violations have occurred (33 U.S.C. § 1365(b)(1)(A)). This letter provides notice of AO Reed's Clean Water Act violations and CERF's intent to sue.

**I. Coastal Environmental Rights Foundation (CERF)**

CERF is a non-profit public benefit corporation organized under the laws of the State of California with its main office in Encinitas, CA. CERF is dedicated to the preservation, protection, and defense of the environment, the wildlife, and the natural resources of the California Coast. Members of CERF use and enjoy the waters into which pollutants from AO Reed's ongoing illegal activities are discharged into Tecolote Creek, downstream to Mission Bay, and eventually the Pacific Ocean.

The public and members of CERF use Tecolote Creek and Mission Bay to fish, sail,

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<sup>1</sup> The Industrial Permit amendments, pursuant to Order No. 2014-0057-DWQ, become effective July 1, 2015. All references are to the General Industrial Permit prior to modification pursuant to Order No. 2014-0057-DWQ are to the "General Industrial Permit." All references to the Permit as modified by Order No. 2014-0057-DWQ are to the "New General Industrial Permit."

boat, kayak, surf, swim, scuba dive, birdwatch, view wildlife, and to engage in scientific studies. The discharge of pollutants by the AO Reed Facility affects and impairs each of these uses. Thus, the interests of CERF's members have been, are being, and will continue to be adversely affected by AO Reed Owners and/or Operators' failure to comply with the Clean Water Act and the General Industrial Permit.

## **II. Storm Water Pollution and the General Industrial Permit**

### **A. Duty to Comply**

Under the Clean Water Act, the discharge of any pollutant to a water of the United States is unlawful except in compliance with certain provisions of the Clean Water Act. (See 33 U.S.C. § 1311 (a)). In California, any person who discharges storm water associated with industrial activity must comply with the terms of the General Industrial Permit in order to lawfully discharge. AO Reed enrolled as a discharger subject to the General Industrial Permit on October 19, 2012 for its facility at 4777 Ruffner Street San Diego, CA, 92111.<sup>2</sup> On June 5, 2015, AO Reed submitted a Notice of Intent for enrollment under the New General Industrial Permit.

Pursuant to the General Industrial Permit, a facility operator must comply with all conditions of the General Industrial Permit. Failure to comply with the General Industrial Permit is a Clean Water Act violation. (General Industrial Permit, § C.1; New General Industrial Permit §XXI.A. ["Permit noncompliance constitutes a violation of the Clean Water Act and the Water Code..."]). Any non-compliance further exposes an owner/operator to an (a) enforcement action; (b) General Industrial Permit termination, revocation and re-issuance, or modification; or (c) denial of a General Industrial Permit renewal application. (*Id.*). As an enrollee, AO Reed has a duty to comply with the General Industrial Permit and is subject to all of the provisions therein.

### **B. The AO Reed Facility Discharges Contaminated Storm Water in Violation of the General Industrial Permit**

Discharge Prohibition A(2) of the General Industrial Permit and Section III.C. of the New General Industrial Permit prohibit storm water discharges and authorized non-storm water discharges which cause or threaten to cause pollution, contamination, or nuisance. Receiving Water Limitation C(1) of the Storm Water Permit prohibits storm water discharges to surface or groundwater that adversely impact human health or the environment. In addition, receiving Water Limitation C(2) prohibits storm water discharges and authorized non-storm water discharges, which cause or contribute to an exceedance of any water quality standards, such as the CTR or applicable Basin Plan water quality standards. (See New Industrial General Permit, §III.D.; §VI.A.). "The California Toxics Rule ("CTR"), 40 C.F.R. 131.38, is an applicable water quality standard." (*Baykeeper v. Kramer Metals, Inc.* (C.D.Cal. 2009) 619 F.Supp.2d 914, 926). "In sum, the CTR is a water quality standard in the General Permit, Receiving Water Limitation C(2). A permittee violates Receiving Water Limitation C(2) when it 'causes or contributes to an exceedance of such a standard, including the CTR.'" (*Id.* at 927).

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<sup>2</sup> Though AO Reed enrolled in 2012, San Diego County assessment records indicate AO Reed owned the property as early as 2003. City of San Diego permit records indicate AO Reed conducted business at the site as early as 2010. Therefore, AO Reed likely operated the Facility unlawfully for years prior to its enrollment.



If a discharger violates Water Quality Standards, the General Industrial Permit and the Clean Water Act require that the discharger implement more stringent controls necessary to meet such Water Quality Standards. (General Industrial Permit, Fact Sheet p. viii; 33 U.S.C. § 1311(b)(1)(C)). The AO Reed and/or Operators have failed to comply with this requirement, routinely violating Water Quality Standards without implementing BMPs to achieve BAT/BCT or revising the AO Reed SWPPP pursuant to section (C)(3).

The monitoring data for the AO Reed Facility indicates consistent, ongoing exceedances and violations of the General Industrial Permit. The AO Reed Owners and/or Operators have discharged and continue to discharge storm water containing pollutants at levels in violation of the above listed prohibitions and limitations during every significant rain event. AO Reed's sampling data reflects 31 discharge violations. AO Reed's own sampling data is not subject to impeachment. (*Baykeeper, supra*, 619 F.Supp. 2d at 927, citing *Sierra Club v. Union Oil Co. of Cal.*, (9th Cir. 1987) 813 F.2d 1480, 1492 ["when a permittee's reports indicate that the permittee has exceeded permit limitations, the permittee may not impeach its own reports by showing sampling error"]).

As reflected below, for every single rain event the AO Reed Owners and/or Operators have monitored, the Facility has exceeded the CTR and benchmarks. At times, the exceedances for Zinc have been as high as almost **100 times** the benchmark. Notably, Tecolote Creek is 303(d) listed for numerous constituents, including Cadmium, Copper, Indicator Bacteria, Lead, Nitrogen, Phosphorus, Selenium, Turbidity, and Zinc. Mission Bay is also listed for Bacteria, Nutrients and Lead at the mouth of Tecolote Creek. Thus, AO Reed's discharges to these receiving waters exacerbates and contributes to their impairment.

No.	Date	Location	Parameter	Units	Result	Benchmark/ WQO
1	12/13/2012	#1	pH	SU	5.87	6.0-9.0
2	12/13/2012	#2	Zinc	mg/L	2.01	.12
3	12/13/2012	#2	Iron	mg/L	1.8	1
4	1/25/2013	#1	Zinc	mg/L	5.19	.12
5	1/25/2013	#1	Specific Conductance	umhos/cm	2,550	200
6	1/25/2013	#1	pH	SU	2.37	6.0-9.0
7	1/25/2013	#1	Aluminum	mg/L	24.7	.75
8	1/25/2013	#1	Iron	mg/L	3.03	1
9	1/25/2013	#1	Nitrate + Nitrite (N)	mg/L	.71*	.68
10	1/25/2013	#2	Iron	mg/L	8.00	1
11	1/25/2013	#2	Zinc	mg/L	11.0	.12
12	1/25/2013	#2	Specific Conductance	umhos/cm	2,540	200
13	1/25/2013	#2	Aluminum	mg/L	1.12	.75
14	1/25/2013	#2	Oil & Grease	mg/L	30.6	15
15	1/25/2013	#2	pH	SU	2.37	6.0-9.0
16	11/21/2013	#1	Oil & Grease	mg/L	21.8	15
17	11/21/2013	#1	Nitrate + Nitrite (N)	mg/L	1.21*	.68
18	11/21/2013	#1	TSS	mg/L	405	100
19	11/21/2013	#1	Aluminum	mg/L	2.77	.75

20	11/21/2013	#1	Iron	mg/L	5.61	.009
21	11/21/2013	#1	Zinc	mg/L	11.8	.12
22	11/21/2013	#2	Iron	mg/L	1.59	.009
23	11/21/2013	#2	Zinc	mg/L	1.54	.12
24	12/19/2013	#2	Oil & Grease	mg/L	18.5	15
25	12/19/2013	#2	Zinc	mg/L	.5	.12
26	12/19/2013	#1	Zinc	mg/L	2.51	.12
27	12/19/2013	#1	Aluminum	mg/L	2.33	.75
28	12/19/2013	#1	Iron	mg/L	2.46	1
29	12/19/2013	#1	Specific Conductance	umhos/cm	240	200
30	12/19/2013	#1	Nitrate + Nitrite (N)	mg/L	4.78*	.68
31	12/19/2013	#1	TSS	mg/L	220	100
*Analytical Results included Nitrate-N and Nitrite-N individually. The benchmark is for total Nitrate and Nitrite so the two figures were added together.						

Every day AO Reed Owners and/or Operators discharged or continue to discharge polluted storm water in violation of the Discharge Prohibitions and Receiving Water Limitations of the General Industrial Permit and New General Industrial Permit is a separate and distinct violation of the Permits and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). The AO Reed Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since AO Reed's enrollment and prior to such enrollment in light of AO Reed's industrial operations at the Facility prior to its enrollment. These violations are ongoing and will continue each day contaminated storm water is discharged in violation of the requirements of the Permits.

### **C. Inadequate Storm Water Pollution Prevention Plan**

One of the main requirements of the General Industrial Permit (and New General Industrial Permit) is the Storm Water Pollution Prevention Plan (SWPPP). (General Industrial Permit §A; New General Industrial Permit, Finding I.54, §X). AO Reed has not developed an adequate SWPPP as required by the Permits.

The AO Reed SWPPP dated May 18, 2015 fails to assess the Facility's potential contribution of 303(d) listed pollutants to receiving waters. Per section X.G.2.a.ix of the New General Industrial Permit the AO Reed Owners and/or Operators are required to assess the potential industrial pollutant sources to receiving waters with 303(d) listed impairments identified in Appendix 3. (New General Industrial Permit, §X.G.2.a.ix). Though the SWPPP identifies the numerous pollutants for which Tecolote Creek is listed, the requisite analysis is missing. The SWPPP identifies Lead, Cadmium and Copper as constituents which will be monitored because they are 303(d)-listed constituents, but fails to indicate why Selenium and Phosphorous were omitted.

Lastly, despite the consistent and continuous water quality violations established by AO Reed's monitoring data, the SWPPP BMPs have not been updated to address such exceedances. Indeed, the only treatment control BMP onsite has been in place since the Facility enrolled under the General Industrial Permit. (See SWPPP, p. 4-1).

Every day the AO Reed Owners and/or Operators operate the Facility without an

adequate SWPPP constitutes a separate and distinct violation of the General Industrial Permit, the New General Industrial Permit, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). The AO Reed Owners and/or Operators have been in daily and continuous violation of the General Industrial Permit since at least September 1, 2010. These violations are ongoing and the AO Reed Owners and/or Operators will continue to be in violation every day they fail to address the SWPPP inadequacies. Thus, the AO Reed Owners and/or Operators are liable for civil penalties of up to \$37,500 per day of violation for 1,830 violations of the General Industrial Permit and the Clean Water Act.

#### **D. Failure to Monitor**

The AO Reed Owners and/or Operators have failed to sample as required during the 2014-2015 wet season. Only one rain event was monitored, though AO Reed's neighbor, TTM Technologies, located at 5037 Ruffner St, was able to sample twice during this wet season. TTM sampled on 12/2/2014, as did AO Reed, but also sampled on 12/12/2014. According to TTM's Annual Report, this rain event began at 5:45 AM, just before AO Reed's business opened. The San Diego Transit Board, located at 4630 Ruffner St, also sampled on the morning of 12/12/2014. Thus, AO Reed could and should have monitored this rain event.

Sections B(5) and (7) of the General Industrial Permit require dischargers to visually observe and collect samples of storm water discharged from all locations where storm water is discharged. Facility operators, including the AO Reed Metal Forming, Inc. Owners and/or Operators, were required to collect samples from at least two qualifying storm events each wet season, including one set of samples during the first storm event of the wet season.

The AO Reed, Inc. Owners and/or Operators have failed to meet these monitoring requirements for the 2014-2015 wet season, despite the fact that another qualifying rain event occurred on 12/12/2014.

Every day the AO Reed. Owners and/or Operators failed to adequately monitor the Facility is a separate and distinct violation of the General Industrial Permit, New Industrial Permit, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). These violations are ongoing and the AO Reed Owners and/or Operators will continue to be in violation every day they fail to adequately monitor the Facility. The AO Reed Owners and/or Operators are thus subject to penalties in accordance with the General Industrial Permit – punishable by a minimum of \$37,500 per day of violation. (33 U.S.C. §1319(d); 40 CFR 19.4).

#### **III. Remedies**

Upon expiration of the 60-day period, CERF will file a citizen suit under Section 505(a) of the Clean Water Act for the above-referenced violations. During the 60-day notice period, however, CERF is willing to discuss effective remedies for the violation noted in this letter. If you wish to pursue such discussions in the absence of litigation, it is suggested that you initiate those discussions immediately. If good faith negotiations are not being made, at the close of the 60-day notice period, CERF will move forward expeditiously with litigation.

AO Reed must develop and implement a SWPPP which complies with all elements required in the New General Industrial Permit, and address the consistent, numerous, and ongoing water quality violations at the Facility. Should the AO Reed Owners and/or Operators

fail to do so, CERF will file an action against AO Reed for its prior, current, and anticipated violations of the Clean Water Act.

CERF's action will seek all remedies available under the Clean Water Act §1365(a)(d). CERF will seek the maximum penalty available under the law which is \$37,500 per day. CERF may further seek a court order to prevent AO Reed from discharging pollutants. Lastly, section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), permits prevailing parties to recover costs, including attorneys' and experts' fees. CERF will seek to recover all of its costs and fees pursuant to section 505(d).

#### IV. Conclusion

CERF has retained legal counsel to represent it in this matter. Please direct all communications to Coast Law Group:

**Marco A. Gonzalez**  
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CERF will entertain settlement discussions during the 60-day notice period. Should you wish to pursue settlement, please contact Coast Law Group LLP at your earliest convenience.

Sincerely,

**COAST LAW GROUP LLP**

  
**Marco A. Gonzalez**



**Livia Borak**  
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CC:

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